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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 647

FIRST BANK STOCK CORPORATION,
Appellant,

vs.

STATE OF MINNESOTA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT AS TO JURISDICTION.

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John Junell,
Clark R. Fletcher,
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Counsel for Appellant.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
State statute the validity of which is involved	2
Date of the judgment sought to be reviewed	3
Date of the application for appeal	3
Nature of the case	3

Table of Cases Cited.

First Bank Stock Corporation v. *Minnesota*, 267 N. W. 519	4
Rio Grande Western Railway Company v. *Stringham*, 239 U. S. 44	5

Statutes Cited.

Constitution of the United States, 14th Amendment	4
Judicial Code, Section 237, as amended (28 U. S. C. 344)	1, 3, 5
Mason's Minnesota Statutes of 1927, Section 2089	3
Section 2337	2, 3

IN SUPREME COURT, STATE OF MINNESOTA

1936.

No. 30836

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

STATE OF MINNESOTA,

Appellant,

vs.

FIRST BANK STOCK CORPORATION,

Respondent.

STATEMENT DISCLOSING BASIS OF JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW ON APPEAL THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF MINNESOTA.

Now comes First Bank Stock Corporation, by its counsel of record, and respectfully shows:

1. The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States to review on appeal the judgment of the Supreme Court of the State of Minnesota:

Section 237 of the Judicial Code, as amended, U. S. C. Title 28, Section 344, providing:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could

be had, • • • where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or law of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon an appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed in a Court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

2. The statute of the State of Minnesota the validity of which is involved:

Mason's Minnesota Statutes of 1927, Section 2337, providing:

"As used in this section of [the act] the word 'money' means gold and silver coin, treasury notes, bank notes and other forms of currency in common use; and the word 'credits' means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state.

"As hereinbefore defined, money and credits are hereby exempt from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three (3) mills on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks located within this state, nor to any indebtedness on which taxes have been properly and fully paid under the provisions of Sections 2301-2309 (2322-2330), General Statutes of Minnesota 1913, nor to moneyed capital in the hands of individual citizens of this state coming into competition with the business of national

banks; provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

3. The date of the judgment sought to be reviewed: October 20, 1936.

4. The date upon which the application for appeal is presented: December 15, 1936.

5. The nature of the case:

The case is a controversy concerning the validity of taxes assessed by the City Assessor of the City of Minneapolis, Hennepin County, Minnesota, upon shares of stock, owned by petitioner, in Montana and North Dakota State banks.

6. The Court rulings bringing the case within the jurisdictional provision relied upon, namely, Section 237 of the Judicial Code (U. S. C. Title 28, Section 344):

(a) Trial.—An answer to the certification, to the Clerk of the District Court of Hennepin County, Minnesota, of the taxes in controversy was filed with said Clerk by petitioner, all according to the provisions of Section 2089 of Mason's Minnesota Statutes of 1927, as amended. Said answer alleged that the application of said Section 2337 of Mason's Minnesota Statutes of 1927 to shares of stock owned by petitioner in Montana and North Dakota State banks was invalid because it constituted a deprival of petitioner's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and because it denied to petitioner the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. The trial court made

conclusions of law that said Section 2337, if construed to impose a tax on the shares of stock in state banks owned by petitioner, was void because it constituted a taking of petitioner's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and because it constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States; that the tax assessed against petitioner should be abated in the amount of Three Thousand Eighty-one and 29/100 Dollars ($3,081.29); and that all interest, penalties and costs should be abated. An order that judgment be entered accordingly was issued. The State's motion for amended findings and conclusions or, in the alternative, for a new trial, was denied.

(b) The appeal to the Supreme Court of the State of Minnesota. The State's appeal from the denial of said motion to the Supreme Court of the State of Minnesota resulted in a reversal of said order by said Supreme Court, — Minn. —, 267 N. W. 519, on June 19, 1936, the court finding the application of the statute valid and saying specifically, page 522 of 267 N. W.:

> "• • • deciding the question strictly as one of Federal constitutional law, we hold that the taxation in Minnesota as attempted under our money and credits law, of the involved stocks in the Montana and North Dakota banking corporations, is not a denial of due process."

The court concluded its opinion by saying, page 526 of 267 N. W.:

> "The order under review must be reversed, with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in this decision, and to order judgment for the state. • • •"

Petitioner's petition for rehearing was denied by said Supreme Court of the State of Minnesota on the 9th day of October, 1936. On October 20, 1936, judgment was entered by said Supreme Court of the State of Minnesota reversing the order under review "with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in this decision, and to order judgment for the State." Said judgment of said Supreme Court of the State of Minnesota appears to be a final judgment, within the meaning of Section 237 of the Judicial Code, as amended. (U. S. C. Title 28, Section 344). *Rio Grande Western Railway Company* v. *Stringham* (1915), 239 U. S. 44.

There is, thus, involved a final judgment of the highest court of the State of Minnesota, in which a decision in the suit could be had, where is drawn in question the validity of a statute of that State on the ground of its being repugnant to the Constitution of the United States; the decision was in favor of the statute's validity. The requirements of Section 237 of the Judicial Code (U. S. C. Title 28, Section 344), *supra*, are satisfied.

Respectfully submitted,

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CLERK'S NOTE.—The opinions of the Court below are printed and appended to the Jurisdictional Statement in the companion case No. 648.